



CONSTITUENT ASSEMBLY OF PAKISTAN DEBATES

Wednesday, 12th April, 1950

OFFICIAL REPORT

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CONSTITUENT ASSEMBLY OF PAKISTAN

Wednesday, the 12th April, 1950

The Constituent Assembly of Pakistan met in the Assembly Chamber, Karachi, at Half Past Five in the Evening, Mr. President (The Honourable Mr. Tamizuddin Khan) in the Chair.

MEMBERS SWORN

Syed Ghulam Bhik Nairang (West Punjab : Muslim).

Mr. Abdul Wahid Khan (West Punjab : Muslim).

Mr. Mushtaq Ahmad Gurmani (West Punjab : Muslim).

Mr. Ahmad E. H. Jaffer (Sind : Muslim).

Mr. Abdul Monem Khan (East Bengal : Muslim).

THE PRIVY COUNCIL (ABOLITION OF JURISDICTION) BILL

The Honourable Mr. J. N. Mandal (East Bengal : General) : Sir, I beg to introduce the Bill to abolish the jurisdiction of His Majesty in Council in respect of appeals and petitions from Pakistan.

(After a pause)

The Honourable Mr. J. N. Mandal : Sir, I move :

“That the Bill to abolish the jurisdiction of His Majesty in Council in respect of appeals and petitions from Pakistan be taken into consideration.”

Sir, by this Bill we propose to take full administration of our laws and still more complete responsibility for doing justice amongst ourselves. This in short is the purpose of this Bill. While in the December session of our Parliament I brought in a Bill to stop all civil appeals from Pakistan to go to the Privy Council, the Honourable Members from all sides echoed a voice that I should have brought a Bill for total abolition of all appeals to the Privy Council. On that occasion I assured the House that the Government would examine the subject and would try to bring in a Bill in the next session for total abolition of appeals to the Privy Council. It is today a pleasure for me to say that the Government have been able to make up their mind in proceeding with the Bill in this session. As I have stated before, in short, the object of this Bill is to stop all appeals, both criminal and civil, from Pakistan to go to the Privy Council. Sir, Honourable Members may note with great interest that we have in this respect taken a more progressive and radical step in the matter of stopping immediately all appeals from Pakistan to the Privy Council. When Indian Parliament some time back passed a Bill of a similar nature, it was preached by some Honourable Members of this House also and they asked us to follow them. Sir, it is a pleasure to say that we have not only followed but surpassed them in some respects. They have, in contemplation of declaration of complete independence on the 26th January, 1950, passed a Bill only a few months before that auspicious date, but allowed a number of appeals to be heard by the Privy Council in the intervening period.

But, Sir, we have, except the cases provided in clause 6 of the Bill, stopped totally the passage of all appeals going from Pakistan to the Privy Council. In the Indian enactment they have exempted the cases

[The Honourable Mr. J. N. Mandal.]

which had been registered in the registry of the Privy Council, but we have not even exempted those cases. Even those cases which had been registered in the registry of the Privy Council will also stand transferred to our Federal Court, which henceforward will be the Supreme Judicial Tribunal of the country. Clause 6 of the Bill has made provision for a few cases, such as, appeals or petitions in which the Judicial Committee of the Privy Council has delivered judgment. Such cases surely cannot come to our Federal Court and also such appeals or petitions in which the Judicial Committee has after hearing the parties reserved their judgment or order. A few more cases are included in this list which have been scheduled for hearing in the Easter sittings of the Judicial Committee of the Privy Council. The Easter sittings will commence from the middle of this month and will continue till the 26th of May. Now, those cases which are on the agenda of the Easter sittings and the hearings of which will be completed during that session will be allowed to be heard, but those cases from Pakistan which will not be heard during the Easter session will stand transferred to our Federal Court.

Sir, I feel I need not elucidate any further points in the Bill. I only wish to say that while moving this Bill for the consideration and passing at once I may be permitted to say that what we are about to do is to make history yet again. We are going to take over a noble and laudable tradition which henceforward will be in our keeping. I hope and pray that our Federal Court which has been fully constituted and which will be charged with the responsibility of this sacred duty and responsibility of the administration of justice will be able to uphold the high tradition of the Judicial Committee of the Privy Council. We pray to God to give us courage, strength, sincerity, honesty and full sense of justice so that the Federal Court, which will be the Supreme Court of the land and which will be not only the guardian of the constitutional law but also the guardian of the civic rights of the citizens of Pakistan, will be in a position to dispense justice with fairness, equity and fairplay.

Sir, I move.

Mr. President : Motion moved :

"That the Bill to abolish the jurisdiction of His Majesty in Council in respect of appeals and petitions from Pakistan be taken into consideration."

Mr. Ahmad E. H. Jaffer (Sind : Muslim) : Sir, I congratulate my Honourable friend Mr. Mandal for bringing before the House a Bill which is long overdue. As you know, Sir, it is now two and a half years since Pakistan came into being and so far we have been looking forward to Privy Council in London for the decision of our appeals. I am very glad that from the 26th May onwards we shall have in Pakistan a Federal Court as our Supreme Court which will decide our appeals. I am certain that this Bill will be widely welcomed all over the country and is a great step forward. After all, we are an independent and a free nation and it is but right that we should have our own Federal Court to decide our appeals. But, while speaking on this Bill, there is one thing to which I would like to refer. As you know, Sir, every State has got three arms—the executive, the judiciary and the legislature. So far, we have got the executive and the legislature in Karachi. But so far as the judiciary is concerned, the Federal Court is located in Lahore. It is but right that the Federal Court which will be Supreme Court should also be in Karachi, which is the capital of Pakistan.

Prof. Raj Kumar Chakraverty (East Bengal : General) : And also in Dacca,

Mr. Ahmad E. H. Jaffer : And also in Dacca if you like. The Federal Court can sit for half the year in Dacca and for half the year in Karachi.

Prof. Raj Kumar Chakraverty : Do it please.

Mr. Ahmad E. H. Jaffer : Actually, when this office was set up the Federal Court offices were set up in Karachi in the building of the Chief Court. When it was temporarily shifted to Lahore, we were told that it was just a make-shift arrangement and later on it will be shifted to Karachi, but that has not been done. As you know, because of the location of the Federal Court in Lahore, the Advocate-General will also have to be in Lahore and he is an *ex officio* member of this House. As the Advocate-General of the Government of Pakistan his advice will be readily available if he is here. If the Federal Court is situated in Lahore, it will be very difficult for the Government of Pakistan to contact him and it will be difficult for him to come from Lahore to Karachi every now and then. It is very necessary, therefore, that the Federal Court should be located in Karachi.

Secondly, there is no local jurisdiction for the Federal Court in Lahore. I was reading this morning the DAWN of yesterday in which it was mentioned that the offices of the Government of Pakistan, namely, of Trade and Commerce, had to be shifted under the orders of the District Magistrate from Chittagong to somewhere else. Suppose tomorrow it enters into the head of the District Magistrate of Lahore to serve a notice on the Federal Court to move their offices to some other place, what will they do ? It is all the more necessary, therefore, that the Federal Court should be situated in a place where they have some local jurisdiction, namely, Karachi.

Thirdly, as my friend Mr. Chakraverty just now said, the Federal Court should, as a matter of fact, be situated in Dacca. I do not disagree with him because I do know that there are lots of people who come from Dacca to Karachi. After reaching Karachi, they have to undertake 24 hours' journey by train before they reach Lahore which costs them additional money. I also know that these litigants have to take their lawyers from Karachi to Lahore which is an additional burden on these poor people.

Now, Sir, I have been told unofficially the Government viewpoint as to why the Federal Court should be located at Lahore. There are three points against it from their point of view : one is that there is no suitable office accommodation available at Karachi for locating this Federal Court and its offices ; secondly, that there is no suitable Library and thirdly that there is no residential accommodation available for the Judges. Now, Sir, I respectfully submit that it is not difficult to get suitable office accommodation in Karachi. We have here the Chief Court building, where at the moment are housed the offices of certain Departments of Government. If these offices are removed to the temporary buildings that are being constructed near the various blocks opposite the Chief Court, it would be very easy and the accommodation that would thus be made available will be entirely sufficient for housing the Federal Court and I am certain it will be quite suitable for it.

With regard to the Library, Sir, I admit that there is not such a very big library available here at present as there is now available in Lahore but I like to point out that there is a small library in the Chief Court and I am informed that the Sind Bar has at its disposal Rs. 50,000 for this purpose—for creating a new library—and I am certain that the Sind Bar

[Mr. Ahmad E. H. Jaffer.]

Council will be too willing to donate this amount and thus make it a big library. Moreover, if you have such a big library in Karachi, it will also be useful to the Ministry of Law which is located in Karachi and the Legal Remembrancer of the Government of Pakistan.

With regard to the residential accommodation for the Judges I am informed that one of the Judges has his own accommodation—he owns a big house here—and that the Advocate General had a house here in Karachi. When our Government can find houses for Ambassadors and Embassies at any cost, I am certain that the Government will not be lagging behind in finding suitable residential accommodation for the Judges.

I respectfully submit, Sir, that these points may be taken into consideration.

Mr. Hamidul Huq Chowdhury (East Bengal : Muslim) : This is a logical step and a sequel to what has happened in the last session as also to the new status that this country has secured. This is a historic occasion, which marks the termination of a long connection extending over 170 to 180 years. The development of Indian laws at the hands of the Judiciary Committee has been profound and substantial; some branches of the law have in fact been created by that august body. That institution has left a heritage for us to be copied and remembered. It is the principle of English judicial independence which has been implanted in all the English systems all over the world—this is one of the greatest achievements of modern times—rule of law is supreme and above all. In fact, the independence of the judiciary is the pre-requisite of the independence of every free citizen and ultimately the foundation of all countries, its progress and its strength depends upon the security that its constitution ensures to individual citizens. The successor of this body will be our Federal Court, which will have the additional duty of interpreting our Constitution. As you know, Sir, the American Constitution has to a very great extent been moulded and given its definite shape by the Supreme Court acting as the Constitutional Court. I have no doubt—and I pray and hope—that our Federal Court will also be able to uphold the tradition that has been bequeathed to it by the Judicial Committee of the English Privy Council.

Sir, in this connection, if I may be permitted to come a little lower and say that now that this Court has been established and expected to work as a Circuit Court, it is in the fitness of things that the question of its working in Dacca should be given a little more attention. I do not agree with my friend that the Court should be shifted to Karachi because Karachi is the capital. I think, Sir, that if the Judges can remain away from the executive it is better for them. Time was when great English Judges refused to attend functions of the then all-powerful Governor-General and Viceroy for fear of executive influence.

Prof. Raj Kumar Chakraverty : Let it be then taken to Dacca which is far away !

Mr. Hamidul Huq Chowdhury : That was a token of their independence and of their freedom from what is called “hobnobbing” with the executive. From that point of view, if it remains in Lahore or in Dacca no harm will be done nor prestige lost. That would further mean over and above great convenience to the litigants, because the Courts serve the litigants and therefore if the Court remains nearer the people it will discharge its functions more effectively and more usefully. In this connection, I would mention, Sir,—and that has been accepted by the

Government—that the Court will sit partly in Lahore and partly in Dacca. The Honourable the Defence Minister knows that the present High Court building at Dacca is half occupied by the Defence headquarters. It is time that this accommodation should be made available to the present High Court, where the work is extremely congested, for appeals from 1949 are still undisposed of in the Provincial High Court, Justice delayed is justice denied. In this state of things people are in danger of losing confidence in the effectiveness of the High Court to resolve their disputes. It is also of the utmost importance that steps should be taken to make sufficient accommodation available for the Federal Court when it goes on circuit and sits in Dacca to hear the appeals in Dacca. There is a large number of appeals pending from both the western and the eastern wings of Pakistan which require quick disposal and it is time that this question should be immediately given attention to.

Shri Karni Kumar Datta (East Bengal : General) : We all welcome, Sir, this measure for having the supreme judicial Tribunal in Pakistan and anybody having experience of the working of the Privy Council must testify to the fact that the judgments of the Privy Council are so refreshing that the lucid explanations and the interpretation of the law sometimes—why sometimes, almost always—did always draw the admiration of the people who had any idea of the administration of the law. I may say after my coming into contact with the judgments of the Privy Council that the judgments of the highest courts of our land—even of the High Courts—were upset by the Privy Council on points of interpretation of the law and appraise—of evidence. Sometimes even elementary matters did not strike even eminent Judges of the High Courts; things then appeared to us to be so simple that they did not even merit our attention.

Sir, if one were to look to section 3 as to the jurisdiction conferred after the abolition of the Privy Council on the Federal Court, one is glad to see that exactly the same jurisdiction has been given to the Federal Court. One of the jurisdictions of the Privy Council is that the Privy Council could exercise jurisdiction by virtue of His Majesty's prerogatives or otherwise. That special jurisdiction of the Privy Council is not to be fettered by the rules of procedure at all. Generally the rule is that the second appellate court cannot look into the fact but the Privy Council was not all fettered by that rule. The Privy Council was fully competent even to look into facts and come to different findings of fact. That was because the Privy Council had a jurisdiction by virtue of exercising His Majesty's prerogatives to administer justice on principles of equity and justice; absolutely unfettered jurisdiction they had.

As to the location of our highest court whether it should be in the capital of the Federation or in Lahore or at Dacca, of course, according to the law as existing now but we have got it modified to some extent it ought to be in the capital of the Federation but wherever it may be the whole matter will come at the time of the preparation of the constitution when it will be decided whether it should be styled as Federal Court or as Supreme Court for Pakistan and the place where the court is to sit has to be selected at that time. But before we decide where the court is to sit we have to bear in mind some important facts. One of them is that there should be a fully equipped library for the purpose and the bar which would ordinarily appear before the Supreme Court must be a bar quite strong and of independence and learning. For a supreme court a strong bar is an essential element in the administration of justice. So, Sir, I think in fixing the site for the court there should be clearly laid objectives before us that the location must be such that

[Shri Kamini Kumar Datta.]

the Court must have for its assistance a fully equipped law library and also a strong bar. My friends talk of the sitting of the Federal Court in Dacca. I remember—I think I made reference to that matter in the last session. It was said at that time that it will be possible to have a sitting of the Supreme Court or the Federal Court at Dacca also for some time and it was a matter which deserves consideration but at the same time I do not think that the Dacca gentlemen will take anything amiss if I say that at Dacca there is no law library. In Dacca, Sir, High Court Judges do not find Acts in their Library. I know of a recent instance in which an appeal was sent in which I myself conducted the appeal before the first appellate court and the Act had to be taken from me to help the Judges. (*Interruptions.*) There are not many law books in the High Court library. I am sorry to say that I am against having the sitting of the Privy Council or the Supreme Court in Dacca. I say that that preliminary condition must be fulfilled. There must be a fully equipped law library for the purpose and the standard of the Dacca Bar too is to be improved. So, Sir, as to the sitting I must say, though I belong to East Bengal, and I really wish that there must be the sitting of the Supreme Court there, but at the same time, Sir, I insist that for the administration of justice the pre-requisite conditions must be fulfilled. But till the sitting is finally fixed I think the rules for preferring an appeal should be framed in such a manner that the litigants of East Bengal may get an opportunity to file their appeals there and to go through the preliminaries for the admission of their appeals there either by a lone judge or by a judge of the High Court. If it can be possible by framing rules to have the preliminaries undergone there so that simply for the filing of an appeal the litigant may not be required to run to Lahore or to Karachi.

Mian Muhammad Iftikharuddin (Punjab : Muslim) : Mr. President, Sir, I had no intention whatsoever of participating in this debate but I could not remain a disinterested observer to the attacks by the Member newly elected from Karachi by the Muslim League Government and on his attempt to injure the interests of Pakistan and the Muslim League in general. Sir, I rise to support the Government on this Bill and on having located, at least temporarily, the highest judicial court in Lahore. Sir, the first objection that the Honourable Member from Karachi raised was that what will happen if the District Magistrate of Lahore takes into his head to ask the highest Judicial Court to get out of the precincts of Lahore Municipality. Well, my answer is ; what is the Safety Act there for, if we cannot use it on such occasions. Secondly, Sir, he said that we need not be deterred from the desire to have the Federal Court in the Federal capital because Rs. 50,000 have already been sanctioned for increasing and improving the Library, the library of the Bar Association in Karachi. Sir, knowing the standard of the Bar at Karachi I have been told and I can well believe it that the major portion of that amount is being spent on detective stories. Therefore I still hold that the decision of the Government in this matter is very wise and finally, Sir, I think we cannot but appreciate the impartiality of the Government on this question because knowing their own weaknesses, generally speaking, they would have liked the Federal Court to be under their very nose and now it is very kind on their part to have allowed it to function in Lahore. Not only in Lahore I could have liked it if it had been sent not only to Dacca but if possible to Chittagong. Lastly if the Indian Government, with which we are now having cordial relations had given us a small space in the famous islands situated in the Bay of Bengal I am

sure this Federal Court would have functioned far more independently than it would be functioning now. Therefore, Sir, I deprecate the attacks of the Honourable Member recently elected from Karachi on the Government policy in this matter and offer my humble support to the Government on this Bill.

The Honourable Mr. J. N. Mandal : Sir, about the controversy regarding the location of the Federal Court—the supreme judiciary of our country I said on the last occasion—and I believed that the assurance given by the Honourable Prime Minister on that occasion had satisfied the Honourable Members who raised that controversy. However, I believe that the Honourable Members could not resist the temptation of speaking something on such an important and historic Bill. They did participate in the debate as the Bill was a long desired one and non-controversial. Therefore they could not find out any point also except one point about the location of the Federal Court. However that question was not totally unimportant and it received due consideration of the Government and I do not propose to add anything more to what was said on the last occasion by the Honourable Prime Minister regarding this point. I had on several occasions discussions with the Honourable Chief Justice of the Federal Court, but on all occasions he appeared to be very sympathetic towards this question especially and I assure the Honourable Members of this House that this point, namely, to have a sort of circuitous sitting of the Federal Court in this country, will be given due consideration.

Sir, I would be failing in my duty if I do not say few words on another point which has been raised in the speeches of some Honourable Members. They have expressed their doubt as to whether the Federal Court would be in a position to administer justice fairly and squarely had the Judges or the Federal Court been located either in the capital or very near to the seat of the Executive. I do not think that there is any substance or truth in their doubt and suspicion.

Now, Mr. Hamidul Huq Chowdhury has pointed out that it is always better that the Judges should be far away from the Executive heads and they should not be allowed to hobnob—a very interesting word, which was considered by the Honourable High Court of Calcutta as defamatory. However, in this House nothing is defamatory or objectionable.

Mr. Hamidul Huq Chowdhury : It is a decision of the Court.

The Honourable Mr. J. N. Mandal : Whatever it may be! Today a sense of responsibility and duty has been created in the minds of all concerned, especially in the minds of those who are highly placed either in public life or in official capacity and I can say without fear of contradiction that the Judges of the Federal Court will be far above this petty consideration and even if they do not stop their social association with the Ministers or other heads of the Executive, they will be able to maintain the full sense of justice, impartiality and fairness in them in the matter of dispensing justice. A right man or an honest man can be expected to be always honest. Although this doubt may justifiably be held in the case of petty officers, but, Sir, I feel inclined to say that whatever might be the pitfalls or shortcomings in the official circles, however low they might have stooped down during and after work in the matter of corruption, the Judiciary still today has maintained the dignity and high sense of morality. Some of my friends might say that they have specific instances where Judicial officers have not conducted well, but, strictly speaking although some complaints might be heard about quasi-Judicial officer—I shall say, Executive Officer functioning as Judiciary, too—I have on very rare occasions heard any complaint against any Judicial Officer, not to speak of the highest Judiciary—I mean Judges of the High

[The Honourable Mr. J. N. Mandal.]

Court or the Federal Court. A man occupying this position has an intrinsic value and sense and being in that position he is sure to be imbued with a high sense of morality, justice and fair play and there is no reasons to suspect that the Judges of the Federal Court would, in any way, misbehave or would detract from their path of duty and responsibility even if they come in contact with the Executive or Ministers in social discourse.

Sir, I would only like, through you, to request my Honourable friend Mian Iftikharuddin to give up this notion that the Judges of the Federal Court might be polluted by coming into contact with others. The implication of his suspicion is that others are usually corrupt. I suppose neither the Ministers are corrupt, nor are the Executive heads. Therefore, there is no likelihood of the Judges being corrupt by coming into contact with them.

Shri Sris Chandra Chattopadhyaya (East Bengal : General) : Was it not a fact that when Chief Justice McLean came to the High Court, he lowered the prestige of the High Court of Calcutta ?

The Honourable Mr. J. N. Mandal : Sir, I quite appreciate the sentiments expressed by the Leader of the Opposition, but those days are gone and we should no longer harbour such an idea about our people. If we continue to be so much suspicious about the character and integrity of our highest Judiciary, then there would be no justification for the Honourable members demanding that we should immediately abolish appeals to the Privy Council. This shows that they have realised that we have got qualified men with the highest legal acumen who can be entrusted with this sacred task and responsibility of administration of justice. We must—even though there may be some defect or, even though we may not rise to such heights—but as we have received complete independence, we must possess a supreme judiciary in our country. We have tried our level best to make the Federal Court as competent as possible and composed of personalities with high legal acumen. They have got wide reputation. Therefore, no person or no Honourable Member of this House can have any doubt about the integrity of the Judges of the Federal Court. I feel that although some Honourable Members have expressed an idea like this, they did not mean it. Even if anybody has got any doubt or suspicion on that score I would only request him to give up that suspicion.

Sir, as I have stated in my first speech, we are really creating history. It is a very very important step. By this Bill we will have the supreme judiciary in our country. I have every confidence in the impartiality and integrity of the Judges of the Federal Court, and I trust that they will be able to uphold the dignity and traditions of that supreme judicial body, namely the Judicial Committee of the Privy Council, in the administration of justice.

Mr. President : The question is :

“That the Bill to abolish the jurisdiction of His Majesty in Council in respect of appeals and petitions from Pakistan be taken into consideration.”

The motion was adopted.

Clauses 2 to 10 were added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

The Honourable Mr. J. N. Mandal : Sir, I beg to move :

“That the Bill be passed.”

Mr. President : Motion moved :

“That the Bill be passed.”

Shri Dharendra Nath Datta (East Bengal : General) : I want to say a few words, Sir.

Of course, with regard to venue, I need not repeat what I have said. It has been agreed that the Federal Court would be sitting in Dacca also. It was agreed at the time when the Federal Court was established by a legislation of this House that rules shall immediately be framed with that object in view. I want to know whether the rules have been framed with that object in view. We must remember the distance between the two parts of Pakistan. We must also remember that here in Karachi, or any other place, there is not sufficient number of lawyers available. In England there are a body of solicitors and a body of British barristers. If the litigant public are to seek the assistance of the Federal Court, coming from Eastern Bengal to Karachi, their expenditure would be higher than they would have incurred when there was arrangement for appeals to be heard in the U.K. Therefore, Sir, rules should immediately be framed with that object in view. Arrangements should be made for the Federal Court to sit in Dacca for some time.

Then, Sir, I want to say a few words with regard to judiciary. Of course, Sir, after the independence, it must be admitted by all those who know, that the judiciary has deteriorated to a great extent. The appointment of the High Court Judges also, to say the least, is not happy. I do not know whether I shall be justified in giving a warning that in appointing High Court Judges, political and communal considerations should not weigh. I am really grieved to let the House know—I do not know whether I am justified—that the recent appointment of High Court Judges of Dacca has led me to the conclusion that the appointments have not been properly made.

Then, Sir, coming to the Lower Courts—where I am a humble lawyer—the judiciary is not functioning....

Mr. President : We are now dealing with the Federal Court.

Shri Dharendra Nath Datta : The motion is “That the Bill be passed.” I was, therefore, speaking....

The Honourable Mr. Mushtaq Ahmad Gurmani : Let there be consistency in irrelevancy !

Shri Dharendra Nath Datta : I want to let the House know that the judiciary has deteriorated and is not functioning properly. I am justified....

The Honourable Pirzada Abdus Sattar Abdur Rahman : You cannot do it....

Shri Dharendra Nath Datta : You do not know the real conditions in Eastern Pakistan.

I was just telling that judiciary is the main pillar of democracy and the people should feel that justice is being done. Therefore, the judiciary should remain separated from the executive. It is not a question—as the Honourable Minister had suggested—of change of things. In this respect the things do not change. There are three organs of administration : Judiciary, Executive and Legislature. The Executive must be set right by the Judiciary. It is, therefore, necessary that justice should be done and the people should feel that justice is being done ; and for that the independence of the Judiciary is essential.

[Shri Dharendra Nath Datta.]

Then, there is another thing which is very objectionable. I think the system of appointing the Chief Justice as the Administrator or Governor, is also objectionable....

Mr. President : Mr. Datta ! This matter does not come at all in connection with this Bill.

Shri Dharendra Nath Datta : Very well, Sir. As this is the ruling of the Chair, I would not like to talk about it.

Before I take my seat I must press that the appointment of judges for the institution which is going to be established should be on a fair basis so that their judgments should be a right to us and should guide us in future.

Mr. President : Mr. Mandal, do you want to say anything ?

The Honourable Mr. J. N. Mandal : Nothing, Sir.

Mr. President : The question is :

"That the Bill be passed."

The motion was adopted.

THE GOVERNMENT OF INDIA (FIFTH AMENDMENT)

BILL—Not concluded.

Dr. Mahmud Husain (East Bengal : Muslim) : Sir I beg to introduce the Bill further to amend the Government of India Act, 1935, (Amendment of the Fifth Schedule).

(After a pause.)

Dr. Mahmud Husain : Sir, I beg to move :

"That the Bill further to amend the Government of India Act, 1935, (Amendment of the Fifth Schedule) be taken into consideration."

Sir, the purpose of this Bill is clear from the statement of objects and reasons. The position is that since the establishment of Pakistan, six to seven lakhs of refugees have come to the province of Sind. It so happens that they have no representation whatsoever in the present Sind Legislative Assembly. Obviously it is not a very satisfactory state of affairs. It is necessary in the interest of those people and also in the interest of the State as a whole to give representation to those people who are now without representation.

The salient features of this Bill are—Firstly, that 7 members are to be added to the Sind Legislative Assembly, that is, 7 Muslim seats are to be given to the Sind Legislative Assembly in addition to the Muslim seats already there. This is more or less in accordance with the number of people which the Muslim members of the Sind Legislative Assembly have been representing. There were 33 Muslim seats in the Sind Legislative Assembly and Muslim population of the province of Sind according to the old census was 32 lakhs. On an average, therefore, each Muslim member represented about 97 thousand of population. It is on this basis that 7 new seats are being created.

The second feature of this Bill is that it is purely of a temporary character. As is clear from the Bill these 7 Muslim seats shall be the seats to be filled by a motion of the Constituent Assembly for the life of the present Sind Legislative Assembly. It is purely a temporary measure. It is really in the absence of any other suitable method of filling these seats for the life of the present Sind Legislative Assembly that this is being resorted to.

Shri Sris Chandra Chattopadhyaya (East Bengal : General) : What is that life ?

Dr. Mahmud Husain : It is difficult for me to say. But you know it as well as I.

Mian Muhammad Iftikharuddin (Punjab : Muslim): Will it have a long life ?

Dr. Mahmud Husain : I hope not. Normal life is 5 years, but 3 years have passed. If the constitution comes into force before the end of these 5 years, there will be earlier elections. In any case it is not going to last for more than 2 years roughly.

The third feature of this Bill is with regard to the method of filling these seats and that has been laid down in the Bill and that is that these seats will be filled by a motion of the Constituent Assembly. Obviously the best method of giving representation to any class of people is by election and if there was any reasonable chance of earlier election in Sind, the proposed method would be unnecessary and even objectionable. But since the representation of these people is absent at present and their interests are suffering and the interests of the State are suffering, it is necessary that they should be given representation as quickly as practicable. It is therefore suggested that the method of representation (election) would not help us. Other methods suggest themselves, such as nomination by the Governor of the province. That would be somewhat undemocratic and one of the most important, I should say, the only Muslim organisation, that is, the Muslim League, is opposed to it.

Another method that suggests itself is ~~co-option~~ by the Sind Legislative Assembly. Here again, co-option is a ~~right kind~~ of thing for a House when the same set of people at least in part are already represented on it. Really those people have no representation on the Sind Legislative Assembly at the moment. So far Sind Legislative Assembly is not really an appropriate organ or an appropriate body to decide as to whom it would co-opt for this purpose. The refugees have no representation whatsoever in the Sind Legislative Assembly and, therefore, it would not be in the fitness of things for Sind Legislative Assembly to have that right of co-option. Then the only method that was left was a motion of the Constituent Assembly.

Shri Sris Chandra Chattopadhyaya : Because it is easier.

Dr. Mahmud Husain : Here we can take a larger view of things. Here we have representation of refugees, not exactly those refugees who have settled down in Sind, but still we have representation of refugees who understand their problems and I think this House would be the right body to select them.

Election by this body is another method which could be tried. But the difficulty is that the usual method of proportional representation by single transferable vote is a method which has been devised for giving representation to minorities. Here really at the moment we have no minority and majority. There is only one single set of people which is to be represented. There are no such sections among the refugees as there are among the population of the whole country and, therefore, the election by the usual method which is adopted in other cases in the Constituent Assembly would not be in the fitness of things. I, therefore, submit that the method, which has been mentioned in this Bill before us, is the best possible method in the circumstances. We want a quick decision and we want to give representation as early as possible to a section of our population which is totally unrepresented in the local Legislature and it will be an appropriate method for achieving this end.

Mr. President : Motion moved :

"That the Bill further to amend the Government of India Act 1935, (Amendment of the Fifth Schedule) be taken into consideration."

Sardar Shaukat Hyat Khan (Punjab : Muslim) : Sir, it has been a surprise, but today is a day of surprises and I am wondering what our magician is going to produce out of his bag. First there were little mice, but one took no notice of them. Now our Government magician has started taking such monstrosities out of his bag and in such quick succession that one has to sit up and wonder. The wonderful party which was wedded to the ideals of democracy and the freedom of the people and giving the democratic right to the people is now bringing before the House Bills after Bills whereby the proper ways of democracy are ended and which means that the nominations are now started. At first it was the Constituent Assembly. Seven members had to be elected from the Punjab and this Government found it fit to take that responsibility upon themselves. Instead of moving forward, retrogression has now started. They have started going backwards from the Constituent Assembly to the Sind Assembly. I do not know whether we will even stop at District Boards and Municipalities or go down even further to the Village Panchayats. I really wonder whether this august body will start nominating even the members of the Village Panchayats. If this method of poking our nose in other people's affairs is allowed, the dignity of this House and the dignity of the democratic constitution will be completely done for. This method of going backwards from the Constituent Assembly to the Provincial Assembly and so on makes one think of a joke in the Punjab which I heard some time ago. A student in the third standard was suddenly demoted to the second and the father ran home in consternation. I would, however, in view of the parliamentary practice, not go further and content myself by saying that this running backwards must stop, otherwise the nation will be forced to take notice of it.

I am sure when the Deputy Minister proposed this method and said that this was the only method left into his hands, he was speaking with his tongue in his cheek. There are other methods and there are other ways. They have been used before and I do not see any reason why they should not be used now. There were some 30 members from the East Punjab, who were refugees and who were elected to the West Punjab Legislature by the foresight of a very great man and statesman of this country. They were made the members of the West Punjab Assembly and they rightly represented the people of the East Punjab. In the case of Sind also you will find many members of the Bombay Legislative Assembly and of other provinces who have migrated along with their people to Pakistan and I do not see why they should not be allowed to become the members of the Sind Assembly in the same way as the members of the East Punjab Legislative Assembly were made the members of the West Punjab Legislative Assembly. The taking of this right by the Central Assembly is a vicious circle and one does not know where it is going to stop. Therefore, I would suggest that we must once again go back to the old method of taking the elected representatives and making them the members of the Sind Legislative Assembly. Dr. Mahmud Husain was good enough to say that the Sind members of the present Sind Legislative Assembly do not know the refugees and they have not got any refugee members and, therefore, they would not be able to make the right selection. On the other hand this Assembly, I am sure, has not got any representative of those people except perhaps Mr. Jaffer, the newly elected member from Karachi, who might be knowing some of these people. Therefore, if we who do not know these refugees can elect their

representatives, surely the Sind Assembly can also elect their representatives. Do not elect them ; they are already elected. Get hold of them and make them members of the Sind Assembly. They were elected by the people themselves and we should not stand in their way. Let them become members instead of playing about with this Act and playing about with democracy as our friend has started doing now. It is a very vicious circle and it is a bad way of doing things. It is not the business of this Constituent Assembly to meddle into the affairs of the provinces. Let us leave them alone to select their own representatives and stop tinkering with the constitution. This reminds me of the constitution which we are here for. The constitution is not yet ready and we are told it will take another two years. Why take two years ? Why not sit right through the summer and make that constitution and be done with it ? Let the other people send their own representatives ; we have got so many other things to do. Instead of doing the right thing, we bring in Coconut Bills to this Assembly which are of little significance with the result that the real work of the Assembly, namely, the framing of the constitution, is being put back. We have met now for over a month and not one Committee's report has come before this House nor has any movement been made to quicken the pace of constitution making.....

Mr. President : I have allowed you to say something on this subject, but you should not further dilate on it.

Sardar Shaukat Hyat Khan : I will not dilate on this if it is your ruling. I hope the Government will take a cue from this and would really get down to their proper job and leave alone the poor provinces to themselves.

Prof. Raj Kumar Chakraverty (East Bengal : General) : Sir, I rise to oppose the Bill. The proposal is to elect 7 members to the Sind Provincial Legislative Assembly and the election is to be held by the votes of this Constituent Assembly. Hailing from East Bengal, we, on this side of the House, are not directly interested in the election of these 7 members to the Sind Provincial Legislative Assembly. But as a matter of high principle is involved in this Bill, I have risen to oppose it. It is admitted that there has been a large influx of the refugees into the province of Sind. It is also admitted that they deserve representation in the Sind Provincial Legislative Assembly, but the procedure that has been suggested in this Bill is open to grave objection. It is a matter primarily for the refugees of Sind and for the people of Sind. At any rate, it is a matter for the Sind Provincial Legislative Assembly and it is none of our business. We are going to usurp the rights of the people of Sind and it is an encroachment on the provincial sphere. That is why I object to this Bill. I anticipate that the honourable mover of the Bill will possibly point out to me that there is a precedent in this matter. He may say that only a few days ago this House elected 5 members from the Punjab and they were elected by the votes of this House. Well, Sir, we submitted at that time that that was a very wrong procedure. If that is to be treated as a precedent, it is a bad precedent and so far as we are concerned, we are not going to allow any more precedent in this matter. Further, there is no analogy between the election of the representatives from the Punjab and the election to the Sind Provincial Legislative Assembly. The Punjab Provincial Legislative Assembly is not in existence ; it lies dissolved ; whereas the Sind Provincial Legislative Assembly is in existence and it is going strong. Let us not forget that there is going to be shortly a general election in the Punjab and the Punjab is a very big province compared to the size of Sind. The Punjab Government appointed a Committee to go into the matter of the election to the Provincial Assembly of the Punjab. The

[Pro. Raj Kumar Chakraverty.]

Committee has submitted its report and everything is under preparation for holding the election in the Punjab.

A large number of refugees came into the Punjab. If, Sir, there can be a election to the Punjab Provincial Legislative Assembly by the people of the Punjab, I do not see any reason why the same sort of election by the people of Sind cannot be held so far as the Sind Legislature is concerned. The refugees came into the Punjab some 2½ years back. The same was the condition with the refugees who entered into the province of Sind also. If the refugees of the Punjab can vote at the election, certainly the refugees of the Sind Province can also participate in the election.

Sir, the plea of emergency has not been taken ; at least it is not stated in the objects of the Bill. If we could wait so long so far as the Sind Legislature is concerned, I do not see why we cannot wait a few days more for a proper election to the Sind Legislature by the votes of the people of Sind.

So far as the provisions of this Bill are concerned, Sir, the object with which this Bill has been moved is likely to be frustrated. The object is to give representation to the refugees, but, Sir, what guarantee is there that by this election we shall be able to elect the refugees. You will in the provisions of the Bill, Sir, that there is no provision for filing of any nomination papers ; there is no provision for scrutiny ; there is no provision for hearing objections ; there is no provision for the Returning Officer ; there is no provision for giving a judicial decision whether a man is a suitable candidate for election or whether he is a refugee from Sind or not. There is nothing in the Bill to decide the qualifications of a candidate and yet this Bill is intended for the refugees. In this regard the Bill is highly defective and unless it is redrafted, it should not be accepted by this House.

Sir, the policy of the Government is not to encourage provincialism. This is good and proper and I support it ; this is necessary in the interests of the solidarity of the whole of Pakistan, but, Sir, this step that we are going to take today is likely to rouse provincial feelings, is likely to antagonize the Provinces. More powers the Centre takes into its own hands, more dissatisfied the Provinces are bound to be ; that is natural ; that is quite human. Yesterday, we meddled in the affairs of the election from the Punjab ; today we are going to meddle in the affairs of Sind. Sir, as there are a few vacancies in the East Bengal Legislative Assembly, I do not know if the Government will not come forward tomorrow to meddle with the affairs of the East Bengal election also. Sir, this is not conducive to the interests of Pakistan or to its solidarity. I would request the Honourable the mover to reconsider the matter from this standpoint also. Sir, the procedure suggested in this Bill is very misdirected. We are going to encroach definitely on the right of the people of a Province. Sir, I know of sovereign bodies which have dissolved the lower bodies, the lower Legislatures ; I have known of sovereign bodies which have created new bodies out of a vacuum in times of emergency or in times of exceptional circumstances, but I challenge the Honourable the mover to quote before me a single precedent where a sovereign body has thrust their nominees in this way upon a lower Legislature. I feel, therefore, Sir, that the method proposed in the Bill is most undemocratic—it is vicious ; it is objectionable—and we are not going to be true to the Objectives Resolution that we passed in this House some time ago, if we pass this Bill ; because we would then be trampling on the rights of the democracy.

Mian Muhammad Iftikharuddin : Mr. President, Sir, I rise to oppose this Bill because I feel that it does injustice to the interests of the refugees in Sind. Sir, generally, it is the practice in the democratic countries of the world that the members of the Government are nominated by the representatives of the people. Here, we are following the opposite practice : we are, or rather the Government is, nominating the representatives of the people ! Sir, after all what is the function of the representatives of the people in democratic Assemblies ? Their function is to criticize the Government when it goes against the interests that they represent in that Assembly ; it is their function to contribute to the discussion in that Assembly for constructive measures to redress the grievances of their voters. Sir, when the Government takes upon itself the task of nominating people, naturally it will nominate people....

Dr. Mahmud Husain : How does the Government come in ?

Mian Muhammad Iftikharuddin : ... or the majority Party—the Professor is always very punctillious about words, forgetting the spirit ; I am talking about the spirit, Professor.

It is the Government for all practical purposes which is nominating these seven new electees to the Sind Assembly.

Sir, coming then to my point I submit that if these members are to be nominated they will have to be of that servile type who refrain from all criticism, lest it may lead to expulsion, and therefore these members will not be able to represent the interests of their constituents or supposed constituents in any manner whatsoever. As a matter of fact, the refugees—the Muhajireen—would have had a far fairer deal, or a less unfair deal, had there been no such representatives of theirs in the Sind Assembly because in that case they could say that their point had been misunderstood—that they had been misrepresented—but now immediately an issue is passed and these servile supporters have put their thumb-mark to Government measures, the reply is “ Well, it was open to the House to reject or to pass the measure and the measure has been passed ; therefore democracy demands that everybody should respect that as their own decision.” Therefore, Sir, it is to my mind an injustice to the refugees in giving them misrepresentation in this manner.

Sir, I only wish—forget for the moment democratic principles—I only wish that the Government, or the majority of members in this House, had considered the Sind Assembly as responsible an institution as the Ruling Princes. Whereas, the Ruling Princes have the authority to nominate the representatives from their States—the Amir of Bahawalpur, the Mir of Khairpur and the Khan of Kalat are competent—are responsible enough—to send their representatives of their people to this august House—unfortunately the elected members of the Sind Assembly cannot be trusted to the extent that these feudal Princes—hereditary lords and autocrats of their States—have been trusted. I cannot think of a single reason the Minister incharge of the Bill, or the member incharge of the Bill can give to show that the interests of the Muhajireen cannot be understood by the members of the Sind Assembly because they have their own separate interests. To that I ask can the interests of people of Bahawalpur who have suffered from the oppression of their rulers for the last so many decades, nay centuries, be understood by their ruler who is their only enemy now that the imperial Government is no longer there.

Mr. President : Mian Iftikharuddin, you are drifting far away from the subject.

Mian Muhammad Iftikharuddin : Sir, I was submitting that it is a most undemocratic manner of giving representation to the Mohajirin in Sind, the manner that has been proposed by Dr. Mahmud Husain. Sir, as a matter of fact neither the Central Government or the Central Assembly nor the Sind Assembly is competent to elect representatives of the Mohajireen to this House or to the Provincial Legislature. The reason is very simple. The Central Government or the Central Assembly is not competent to elect because the criticism of these Mohajireen is directed towards the powers that be against their measures, against their sins of omission and sins of commission. And therefore people chosen by that Government will naturally not be able to appreciate the difficulties of their brethren, the other Mohajireen. Secondly, Sir, the Sind Assembly I admit is not competent to nominate or to co-opt the Members of the Mohajireen because the interests of the landed aristocracy of Sind today are in conflict not only with the interests of their Haris but also with the interests of the poor refugees who have come and are now searching for land and employment much against the wishes of this landed aristocracy of Sind. Therefore, Sir, the only course open to the Government was to hold elections. But to that when I say so the reply will be the Objectives Resolution had prevented us from holding the elections or that the emergency that the country faces is so great that holding of elections may cause some sort of unsettlement in the minds of the people and some disturbance in the Provinces of Pakistan but I would like to remind the Member in charge of the Bill that in the Punjab he may have heard the Assembly was dissolved and elections are going to be held since we passed 13 months ago the Objectives Resolution and since according to that we proclaimed that we wanted to give social justice to high and low in Pakistan and since social justice and political justice means that every adult person, woman or man, should have the right to elect the Government of the State. I cannot understand why the Government did not order a year ago the preparation of rules on adult franchise to hold elections to Sind Assembly. I would remind Dr. Mahmud Husain that these refugees came to Pakistan not two months ago, not a year ago but really two and a half years ago and standing on democratic principles as we boast that we do, it did not require a very brilliant brain to think that the best method to absorb these refugees, the best method to make the Sind Assembly or the Assemblies of other Provinces fully representative was to hold elections on adult franchise as soon as possible, even though the preparation or the drafting of the Constitution may take two or three years and Government who now knows that it took a year and a half to draft a two-page Objectives Resolution is bound to take some decades to draft a constitution of a 100 or 200 pages. That Government if it had any love for democracy would certainly have resorted to the only democratic measure to give representation to those people, *viz.*, adult franchise as early as possible. Even now it is not too late and I appeal to the Government.....

Mr. President There is no Government here in this House at the moment.

Mian Muhammad Iftikharuddin : I appeal to the Member in charge of the motion, I appeal to the majority party members in this House that they should, as soon as possible, hold elections in Sind and let real representatives of the people come in. Sir, in proposing this I have no

other reason in my mind excepting this that it is well known to you that before the advent of Pakistan it did not matter to us as to what class a person belonged and what interests he represented. Anyone who came to us we accepted him in our fold because we wanted to show that such a vast majority of people or representatives of the people were with us so as to strengthen our demand for independence. If in those days even the hereditary traitors or life-long traitors of independence and freedom had come to us even a day before the declaration of Pakistan we would have accepted them in our fold though it appeared quite wrong to my mind, nevertheless, we did that. I know we would have accepted them but, Sir, after the Pakistan, the men who joined us as most of these representatives of landed aristocracy did because of opportunism and we took them in because of expediency. Surely, these people are not at all competent to deal conscientiously, sincerely and impartially with the problems of freedom today. Sir, therefore, I think that these people, the Members in the Provincial Assemblies do not represent the interests, the aspirations and the demands of the people of Pakistan today. Therefore today to do justice to the people of Pakistan and further to do justice to the Government of Pakistan it is necessary that we should check up the wishes of the people of Pakistan by holding elections and the Government is really sitting on a volcano if it closes all means of receiving information, all means of knowing the presentday wishes of the people. If the Government is honest—and I take it for granted that the majority party is honest—they should be taken to know the latest demands, the presentday wishes of the people so that they may not go wrong, so that they may not betray them, so that they may not displease them to such an extent that the people may think of other means than the ordinary constitutional and democratic means of enforcing their own policies. The Government in following this policy is really the greatest disruptor of the united front of the people of Pakistan and I therefore warn the majority Members that within a year or two if we go on like this people of Pakistan will have to think of other methods which is not what we want.

Finally, Sir, if the Government or the majority party had this much regard for democratic principles that it allowed these Assemblies—I cannot say, because I do not know if it can allow them to function as ordinary democratic assemblies of the world—to function even as the slave Assembly in Delhi or in the provinces as assemblies used to do under the British Raj, but it should have—I should have thought—at least allowed independence in these assemblies to the extent that the British Government used to allow in District Boards. Sir, even that I think is too much for the Government and I for one have lost faith altogether that it will ever do that, but if the Government could do one thing at least, could maintain the status of these assemblies to that of the parliamentary societies or debating societies in the colleges where at least the expression of different views is permitted, then one could at least expect that there would be a free expression of views. As things are—and we know what they are—I feel that we are deteriorating every day and we are thereby displeasing our people and as such doing harm to the interests of Pakistan, to its people and to its future. So, I once again appeal to the majority members in this House to reconsider this proposal and open the doors of democracy to the people of Pakistan, so that they may come into their own and the Government may be able to act in accordance with their wishes.

Mr. Ahmad E. H. Jaffer (Sind : Muslim) : Sir, I had no desire to participate in this debate, had it not been for the two speeches of my

[Mr. Ahmad E. H. Jaffer.]

honourable friends from West Punjab, Mian Iftikharuddin and Sardar Shaukat Hyat Khan. Sardar Shaukat Hyat Khan opening the debate said: "Today is a day of surprises for me". I want to tell him that today is a day of a greater surprises for me, because I discover that the two refugee stalwarts from West Punjab have suddenly awakened to take such a great interest in the refugees who have come to Sind that they have awakened after two or 2½ years to see that they are getting all the seats in the Sind Assembly and they are now trying to cause delay in their election. I wish they had made some constructive suggestions with regard to the filling of the seats. Mian Iftikharuddin says: "Ask the Sind Legislative Assembly to fill the seats." Then he says, "why should the Sind Assembly fill these seats? They will take time to do so." Then he says, "Well I know that the interests of the Sind Members are quite different from those of Haris. Maybe they may not elect." Is this the suggestion that he has made? At the same time he says: "Why not hold election now?" May I ask him, is election by adult franchise proposed by him possible at this stage? How is it possible to prepare the electoral rolls of seven lakh people who have settled down in Sind?

Mian Muhammad Iftikharuddin: I said two years ago.

Mr. Ahmad E. H. Jaffer: Today I ask him...

Mian Muhammad Iftikharuddin: Please address the Chair.

Mr. Ahmad E. H. Jaffer: I am addressing the Chair. I want no interruptions as I am in full possession of the House. I ask him why did he not come two years earlier before this Government and say: "Well here are seven lakhs of people who have settled in Sind and they must be given representation in the Sind Assembly". Sir, now, if this Government has awakened after two years, does it lie in the mouth of my honourable friend to come forward and make proposals delaying the election of these poor refugees who have been going from pillar to post for the last 2½ years. Is it fair for him to adopt this attitude? The filling of these seats by the Sind Assembly would mean delay for another year as they may not meet till the next Budget. Are you, by this attitude of yours, helping the cause of refugees?

My friend, Sardar Shaukat Hyat Khan says: "Why is it that the same system is not adopted here as was adopted in the case of the members from East Punjab who migrated to West Punjab and were nominated?" Why is similar principle not adopted here? May I inform the Honourable Member that today in Sind there are members not only from one province like Bombay—if he does not know I cannot help it—but there are members from different provinces of India, from U. P., Madras and other provinces. Sir, how is it possible to nominate all the members to the Sind Assembly? I think there are now more than seven members, maybe there are ten. How are we going to nominate them en bloc? Did he care to find out how many members of the provincial assemblies have settled down in Sind who should be provided representation. I personally feel that every member of the Provincial Legislative Assembly who migrated from India to Pakistan should definitely have a seat in the Sind Assembly and nobody would be happier than myself if every member of the Provincial Legislature from India finds a seat in the Provincial Legislature and also in this House. Today I represent the refugees who have settled down in Sind, in this House. Only one seat has been given to the refugees and what do I find? I come here to find that the refugees should come into Sind Assembly after two years. I really feel surprised that my friends have

no sympathies for or have at heart the betterment of the refugees who have come and settled here and who have no representation in the Provincial Legislature. They should have come forward and helped them and pleaded their case before the Government. Sir, I appeal to them that this motion which is now before the House should be put into being immediately. I do not want that the refugees who have settled down in Sind should go unrepresented in the Sind Assembly even for a day longer. Two and a half years have already passed and I sincerely hope and earnestly trust and I appeal to Government that as soon as this motion is passed, the seven refugees of Sind should find their seats in the Sind Assembly without one day's delay.

Sir, I do not wish to take much time of the House. I have only one thing to say. My friend, Mr. Chakraverty, had raised the question : "How can the Members of this House know that they are people from Sind ?" I want to point out that my honourable friend, Mr. Khuhro, who is the President of the Provincial Muslim League, is bringing forward an amendment to this Bill that these members who are to be elected to the Sind Assembly must have six months' residential qualification. "Persons elected to fill these seven seats shall be only from among those who have been residing within the present limits of the province of Sind since first October, 1949." I am certain that if this amendment is passed you will have no members in the Sind Assembly who have not settled in Sind.

Prof. Raj Kumar Chakraverty : Are you a representative of the refugees ?

Mr. Ahmad E. H. Jaffer : Definitely, I am.

He also asks : "How are we to know who the refugees are ?" I want to tell him that as members of Muslim League in this House we have the help and guidance of the Central Parliamentary Board of the Pakistan Muslim League, which has on the Board representatives of the refugees. The Chairman of the Board, Choudhry Khaliquzzaman, is himself a refugee and I want to tell Mr. Chakraverty that we can fully rely on the decision of the Central Parliamentary Board. So far there has not been a single decision which can be said as improper. Refugees have been selected and I can assure him that the refugees of Sind will find proper representation. People who are really the refugees and who have really settled down in Sind will find seats in the Assembly and no one else. Sir, as a representative of the refugees in this House I wholeheartedly support the Bill and sincerely hope that these seven members will find their seats in the Sind Assembly without further delay.

Mr. Hamidul Huq Chowdhury (East Bengal : Muslim) : Sir, having heard different opinions on the subject it appears to me that a correct decision is, if not impossible, extremely difficult to arrive at. None of the alternatives suggested as an ad hoc measure would give people satisfaction, nor will it satisfy the principle of democracy. If Sind Assembly elects, certainly the Sind Assembly cannot be said to consist of the refugees. If this House elects, certainly it has got no better claim to represent the refugees as such. Therefore, some via media has to be found and the one that has been proposed for this House cannot, in any way, be said to be fundamentally wrong to the other alternative. The crux of the whole problem, it appears to me, is expedition with the Constitution. Today Sind may have seven lakhs of refugees. If things do not turn out in the way in which we hope after the two Premiers' agreement, then six months hence it may be ten lakhs. Similar problems may arise in the Punjab and for the matter of that in East Bengal.

[Mr. Hamidul Huq Chowdhury.]

Therefore, you will not be able to arrive at a final decision on this question. I should say that the sooner we come to grips with constitution-making—and it should not take us very long to complete the framework of the constitution even in 1950 if we sit seriously for three to six months—the better it would be for the whole of Pakistan.

It is wrong for Mian Iftikharuddin to say that the Government has done this and the Government has done that. In the matter of constitution-making, Government plays no part. This Assembly is a sovereign body for the purpose of making constitution, and you, Mr. President, are the chief executive in framing that constitution. The responsibility, the right and duty devolves upon you. Delay or deferring it will ultimately be your responsibility. Therefore, Sir, we look upon you to guide us. This work should be finished as soon as possible—the sooner the better, because the country demands it. There is a feeling abroad that there is delay—unreasonable delay—in framing the constitution, specially, when in India they have framed their constitution and have started working it. I submit, Sir, that the Government is always ready to help. Government has been giving every sort of assistance and it lies in us, with your assistance, how soon we can frame the constitution.

Sardar Asadullah Jan Khan (N.-W. F. P. Muslim) : Mr. President, I am a non-party man and belong to no party of this Honourable House.

I stand to oppose this Bill for several reasons. Firstly, it is quite inconsistent with the principle of parliamentary democracy and deprives the State and the nation of all the advantages of the parliamentary system of Government. Secondly, it aims at making this Constituent Assembly a mere tool in the hands of the executive, utterly disregarding the fact that this House is meant to control the Government and not to act as its instrument. Lastly, it casts a slur on the fair name of the Assembly and the Government and represents an attempt to break away from democracy and revert to the old autocratic pattern.

To explain, Sir, I take the first contention. The Parliamentary system is merely a means to the end of setting up a responsible government. As opposed to this, there is absolute government which means arbitrary rule. A responsible government is a repository of the national traditions and promotes the people's welfare and well-being. If elected members do not properly discharge their responsibilities they are liable to be chucked out in the next elections. As against this if members are nominated they would be responsible only to the government and would feel their duty only towards those who have nominated them. The parliamentary system of government is preferred to all other systems because of two things, its traditions of social cohesion and its high standard of responsibility. Both these are psychological factors of the highest importance but this Bill ignores them. The third remarkable feature of the parliamentary system is the existence of a close bond between the electors and the elected, but this Bill sets it at naught.

Now, for the second contention that instead of controlling the government this Constituent Assembly is becoming a mere tool in its hands. For an analogy let us consider the position of the reichstag. The real power was in the hand of the Nazi Government and whatever the Nazi party decided was communicated to the members of the Reichstag whose job was merely to take their cue from the Government and express their acquiescence in that decision. So far as our Constituent Assembly

is concerned, it can efficiently discharge its responsibility only if it has the freedom to place before the Government a broad outline of its policy but if the executive chooses to make up its will the sole determinant of all its actions, this House can serve no useful purpose.

Sir, we have given very wide publicity to our Objectives Resolution and have announced with flourish and fan-fare that ours would be a democratic system of government, but, if we give a moment's serious attention to the real content of democracy, we will find that it stands for a wide diffusion of power and that the concentration or condensation of power is a concept quite alien to the spirit of democracy. When Louis XIV, the King of France declared "I am the state", he was making a factual statement as he had concentrated the whole power of the State in his own person and had become, in a way, an embodiment of absolutism. No historian has defended the French despotism ; on the contrary it has incurred the lasting approbium of the posterity. It did not last long and began to totter after the Grand Monarch's death. His successor, Louis XV, had to exclaim in dejection, "Monarchy has become old, but it will last my time !" It means that even kings felt that Louis XIV was an embodiment of absolutism. The revolution followed soon and we all know what happened them after.

Sir, I would like to draw the attention of the government especially the two Doctors of History sitting on the Treasury Benches to a historical event. When Lysander, the Spartan leader, conquered Athens and set up a Council there, he sent a messenger to the Athenians, summoning them to his presence offering to appoint 10 or 12 more citizens as members of the Council. In all subsequent histories this incident has been described as "The Tyranny, of the Thirty". Sir, this is a historical fact and not a figment of my imagination.

Mr. President : I think you would like to take some more time ?

Sardar Asadullah Jan Khan : Yes, Sir.

Mr. President : You will continue to speak at the next occasion.

The House stands adjourned till 10 A.M. on 14th April.

The Assembly then adjourned till Ten of the Clock on Friday, the 14th April, 1950.